



— STATE OF SOUTH DAKOTA —

OFFICE OF THE GOVERNOR

KRISTI NOEM | GOVERNOR

July 25, 2023

Honorable Marty Jackley
Attorney General's Office
1302 E Hwy 14
Pierre, SD 57501

RE: Senator Jessica Castleberry and S.D. Const. Art. III, § 12

Dear General Jackley,

The Department of Social Services recently discovered apparent violations of S.D. Const. Art. III, § 12 involving Senator Jessica Castleberry's receipt of COVID-19 federal stimulus funds. This letter is a formal request for your investigation and enforcement of this constitutional provision, which may include disgorgement and other penalties.

Based on public records filed with the Secretary of State, the Senator is the owner of Little Nest Preschool, LLC in Rapid City, SD since its organization in 2010. Beginning in 2020, Little Nest Preschool applied for and received COVID-19 federal stimulus funds totaling, what is believed to be, over \$603,000.

Payments were found by Department fiscal staff who recognized the Senator's name on a recent grant application for Little Nest Preschool to receive another \$4,000.¹ At that point, further review into Little Nest Preschool turned up over a dozen payments since 2020.

The Senator was appointed to a vacant seat in the Senate of the state legislature in 2019 and continues to serve today. These federal stimulus funds were appropriated by various General Appropriations Acts that Senator Castleberry voted on in 2020 Special Session (HB 1001 and SCR 601), 2021 Regular Session (SB 64 and SB 195), 2022 Regular Session (HB 1340 and SB 60), and 2023 Regular Session (SB 210).

The South Dakota Constitution prohibits a state legislator from having a direct or indirect interest in a contract authorized during their time in office and up to one year thereafter. See, S.D. Const. Art. III, § 12. The South Dakota Supreme Court strictly

¹ That application has been denied by the Department, and Senator Castleberry has been informed of the denial.

construes this prohibition and said that this provision "precludes a current state legislator from contracting directly or indirectly with the State to receive funds from [COVID-19] grant programs." *In re Noem*, 950 N.W. 2d 678 (2020). The Supreme Court could not have spoken more clearly or on point to this issue. The Senator has a personal and ethical obligation to avoid conflict of interests. The Senator also swore an oath to support the state Constitution. While the ethics of this malfeasance may be resolved by the Senate body itself, the multiple alleged constitutional violations are within your jurisdiction to determine and your duty to enforce. For a century, the Supreme Court has declared that such contracts are null and void. Supporting documentation will be forthcoming separately for the Department.

In addition, while SDCL 5-18A-17 through 5-18A-17.6 does not ordinarily apply to members of the Legislature because members are already bound by the state Constitution to not self-deal, the subrecipient grant agreements include a provision that references these conflicts of interest statutes. Please review the content of this provision in your investigation as the State may have a breach of contract claim which it is your duty to prosecute as well.

Thank you for your honorable service to the people of this State and acting in the State's best interest in accordance with the oaths we have taken to uphold the state Constitution.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kristi Noem", with a stylized flourish at the end.

Kristi Noem
Governor